IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2002

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THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION Nos.4884 to 4887 of 2002 and WRIT PETITION Nos.5651 of 2002

and

W.P.M.P.Nos.6906 to 6909 and 7853 of 2002

Anaimalai National Estate
Workers Union represented
by its General Secretary,
Valparai. Petitioner in W.P.No.4884 of 2002

Anaimalai Ambedkhar Thotta
Makkal Sangam represented
by its General Secretary,
Valparai. Petitioner in W.P.No.4885 of 2002

Anaimalai Dravida Thozhilalar
Munnetra Sangam (LPF),
Valparai, represented by its
General Secretary. Petitioner in W.P.No.4886 of 2002

Tamil Nadu Plantation Worker's
Union, represented by its
General Secretary,
Coonoor. Petitioner in W.P.No.4887 of 2002

Edayadeivam M.G.R.Thotta Thozhilalar
Sangam, represented by its President,
Valparai. Petitioner in W.P.No.5651 of 2002

/versus/

1.The Planter's Association
of Tamil Nadu, Coimbatore.

2.Stanmore Estate,

represented by its Manager,
Valparai.

3.Injiparai Estate
represented by its Manager,
Valparai.

4.Siricundra Estate,
represented by its Manager,
(M/s.Hindustan Levers Ltd.),
Valparai.

5.Panchamalai Estate,
represented by its Manager,
Valparai.

6.Valparai Estate,
represented by its Manager,
Valparai.

7.Veloni Estate,
represented by its Manager,
Valparai

8.Urilikal Estate,
represented by its Manager,
M/s.Tata Tea Ltd.
Urilikal Estate Post,
Valparai.

9.Pannimedu Estate,
represented by its Manager,
M/s.Tata Tea Ltd.,
Pannimedu Estate Post,
Valparai.

10.Sholayar Estate,
represented by its Manager,
Sholayar Estate (P.O.),
Valparai.

11.Kallar Estate,
represented by its Manager,
M/s.Jay Shree Tea and
Industries Ltd.,
Sholayar Estate (P.O.)

12.Water falls Estate-East,
represented by its Manager,
Water falls Estate (PO).

13.Water falls Estate-West,
Water falls Estate (PO).

14.Iyerpadi Estate,
represented by its Manager,
(M/s.Parry Agro Industries Ltd.),
Iyerpadi Estate (PO).

15.Paralai Estate,
represented by its Manager,
(M/s.Parry Agro Industries Ltd.),
Iyerpadi Estate (PO).

16.Murugally Estate,
represented by its Manager,
(M/s.Parry Agro Industries Ltd.),
Murugally Bazaar (PO).

17.Sheikal Mudi Estate,
represented by its Manager,
(M/s.Parry Agro Industries Ltd.),
Murugally Bazaar (PO).

18.Mukkottumudi Estate,
by its Group Manager,
Mudis Group,
M/s.Bombay Burmah Trading
Corporation Ltd.,
Mudis Post.

19.Thonimudi Estate,
by its Group Manager,
Mudis Group,
M/s.Bombay Burmah Trading Corpn. Ltd.,
Mudis Post.

20.Thayamudi Estate,
by its Group Manager,
Mudis Group,
M/s.Bombay Burmah Trading Corpn. Ltd.,
Mudis Post.

21.Gajamudi Estate,
by its Group Manager,
Mudis Group,
M/s.Bombay Burmah Trading Corpn. Ltd.,
Mudis Post.

22.Anamudi Estate,
by its Group Manager,

Mudis Group,
M/s.Bombay Burmah Trading Corpn. Ltd.,
Mudis Post.

23.Karamalai Estate,
represented by its Manager,
(M/s.Periya Karamalai Tea
& Produce Company Ltd.),
Karamalai Bazaar Post,
Valparai.

24.Akamalai Estate,
represented by its Manager,
(M/s.Periya Karamalai Tea
& Produce Company Ltd.),
Karamalai Bazaar Post,
Valparai.

25.Vellamalai Estate,
represented by its Manager,
(M/s.Periya Karamalai Tea
& Produce Company Ltd.),
Karamalai Bazaar Post,
Valparai.

26.Nadumalai Estate,
represented by its Manager,
(M/s.Periya Karamalai Tea
& Produce Company Ltd.),
Karamalai Bazaar Post,
Valparai.

27.Waverly Estate,
represented by its General Manager,
NEPC Tea Garden,
Water falls Estate Post,
Valparai.

28.Mount Stuart Tea Estate,
represented by its General Manager,
NEPC Tea Garden,
Water falls Estate,
Valparai.

29.Commissioner of Labour,
Teynampet,
Chennai 600 006. Respondents in all
cases.

30.PASI Tea Research Foundation,
represented by its Director,
Nirar Dam BPO,
Valparai,
Coimbatore District. R.29 in WP.4885/2002

For petitioners in all cases : Mr.K.Chandru,
Senior Counsel, for
Mr.D.Hariparanthaman in
WP.Nos.4884 to 4887 of 2002
Mr.S.Saravanan, in
WP.No.5651 of 2002

For 1st respondent : Mr.Vijay Narayan

For 2nd respondent : Mr.A.L.Somayaji,
Senior Counsel for
Mr.T.S.Gopalan

For 12th respondent : Mr.R.T.Doraisami

: ORDER

These writ petitions have been filed by the different Trade Unions registered under the Trade Unions Act,1926, representing the Plantation Workmen employed in the various Estates in Valparai, Anaimalai areas in Coimbatore District. According to them there are about 24,000 permanent workmen and about 26,000 temporary workmen and daily rated workmen employed in the Estate/respondents 2 to 28. Considering that identical issues are raised in all the above writ petitions, it is convenient to refer to the facts stated in W.P.No.4884 of 2002.

2.According to the petitioner, the Union has been entering into various settlements from time to time right from 1962 separately for each category of workmen regarding the wages and working conditions. The last of such settlement was entered into between Unions and the first respondent under Section 18(1) of the Industrial Disputes Act (hereinafter called "the Act") on 10.7.1996`. Though the period of settlement was for three years, ending on 31.12.1998, the terms of the settlements stand automatically extended even after the said period in terms of Section 19(2) of the Act. Regarding wages of Supervisory staff and the skilled workers also, similar settlement was arrived at on 2.5.2000 for the period commencing from 1.9.1999 and for the general category on 12/13.1.2000 for the period commencing from 1.1.1999 to 31.12.2001.

3.In terms of such settlement the employees have also been receiving apart from wages, Dearness Allowance, incentive etc. On

completion of the period of settlement, they had demanded revision of the wages considering the price of essential commodities. But to their surprise and shock the Planters Association of Tamil Nadu, the first respondent herein (P.A.T.) issued three individual notices dated 24.10.2001 informing their intention to terminate the settlement dated 10.7.199 6, 2.5.2000 and 12/13.1.2000 with effect from 31.12.2001.

4.On receipt of such notices almost all the Unions wrote letters objecting to the proposals and requested withdrawal of the proposals. Instead of holding talks and arriving at a mutual settlement, respondents 2 to 28 sent individuals notices on 30.11.2001 and 8.12.2001 to all Unions under Section 9-A of the Act seeking to withdraw, alter, modify the existing benefits flowing from the said settlement. The changes thus contemplated not only result in reduction of wages and incentives, but also changes in the work pattern resulting in increased work load. A conciliation notice dated 7.12.2001 was received from the Commissioner of Labour, 29th respondent. The Union and the first respondent Association took part in the Conciliation proceedings and the 29th respondent advised respondents 2 to 28 not to give the effect to the proposed changes and also both parties to have bilateral negotiations to resolve issues amicably. As on the date of the writ petition, nine rounds of talks were held, but the first respondent was adamant in implementing the proposed change in working conditions. Respondents 2 to 28 have also notified that the wages and other benefits for the month of January, 2002 would be paid only in accordance with the changes proposed in the notice issued under Section 9-A of the Act. The disbursement of wages will be made with effect from 7th or 10th of every month depending on the strength of the workers in each of the estate. According to the petitioner Union, as per the proposed change each workmen will lose about 30 to 40 per cent. Consequently, the workers refused to receive wages for the month of January, 2002. It is further stated that the settlement cannot come to an end without following the procedure under Section 19(2) of the Act. It was also not open to the management to change the terms and conditions of service during the pendency of the dispute.

5.In their counter, the Planters Association have not disputed the details relating to the execution of the settlement as arrived at between the parties as pleaded by the petitioners; but would state that the agreements were terminated by issuing notice under Section 19(2) of the Act with effect from 31.12.2001. Thereafter, individual notices have been issued by each of the Estate separately under Section 9-A of the Act and not by the Association. It is also pleaded that the writ petition is not maintainable since the individual Estate or the Planters Association is not a State or Instrumentality of the State in terms of Article 12 of the Constitution of India and hence no mandamus can be issued against respondents 1 to 28. As a result of the financial crisis faced by the Tea industry and the Plantation, the proposed revision of wages was imminent and necessary and in fact a High Level Meeting of the representatives of the employers and the Union was convened and also a meeting took place with the Hon'ble Minister for Labour and pursuant to the said meeting they had requested the Joint

Commissioner of Labour by their letter dated 29.11.2001 to convene a High Level meeting. Notice under Section 9-A of the Act was given between 30.11.2001 and 8.12.2001. Notice of Conciliation was given by the Joint Commissioner on 7.12.200 1. Even prior to 1.1.2002 (when the changes in the condition of service were to take effect) on 18.12.2001 itself the Commissioner directed both parties to hold direct talks between themselves. Such talks did commence on 1.1.2002 and continued on several dates. Therefore, there was no Conciliation proceeding pending on 1.2.2002 or subsequently. It is further stated that the Association has only a representative status and hence the intimation given by the Labour Commissioner to the Association cannot be treated as notice to individual employers. The parties are still carrying on by-partite negotiations in which the petitioner's Union are also taking part. There is no contravention of Section 33 of the Act in any manner. Even assuming that a Conciliation proceeding was pending as alleged by the petitioners and that there was any violation of Section 33 of the Act, the petitioners should have filed a complaint under Section 33-A of the Act and the Conciliation Officer should have held discussions in an attempt to arrive at an interim arrangement. Section 33-A of the Act itself provides an alternative and efficacious remedy and hence, there was no justification to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

6.It is further stated that earlier there was a direct industrywise negotiation covering all the areas and because of the delay, the Unions operating in Nilgiris District, has expressed desire to arrive at a settlement in respect of their areas, covering plantations in the Taluks of Udhagamandalam, Kotagiri, Coonoor. A settlement was arrived at agreeing on fixing wages at Rs.70/- per day plus Attendance bonus of Rs.2/- per day and thus in respect of a major Plantation area, settlement had been arrived at. The settlement was to remain in operation for a period of three years. It is further stated that the settlement covers more than 12,000 workmen. In fact, the Unions affiliated to the Central Federations to which some of the present petitioner's Union are affiliated, are also signatories to the said settlement.

7.In the counter, further details have also been given which according to the first respondent, would provide more than adequate reasons to justify the downward revision of wages as contemplated. The circumstances thus expressed include various factors such as Liberalisation policy of Government of India, Trade policy allegedly dictated by the World Trade Organisation (W.T.O.), general recession in the industries etc. Considering the issues which are relevant for the disposal of these writ petitions, there is no need to go into those details.

8.Separate counter affidavits have been filed by the various Estates (i) 12th respondent (ii) Respondents 14 to 17 (iii) Respondents 23 to 26. The defence taken therein are almost similar to

that of the counter filed by the Association. In addition, they have also pleaded reasons for justifying the downward revision of the wages.

9.Mr.K.Chandru, learned Senior Counsel for the petitioners submits that the proposed revision affects not only the service conditions, but also the very living conditions of the labour force in the area. Cut in the wages and allowances were so drastic that it was not possible for the petitioners/workers to survive. There was no justification in comparing the workers in Nilgiris area as most of them are natives of the said area while the workers in Anaimalai and Valparai areas are migrants from other Districts. He would also state that if the very same Unions had agreed for the settlement in the Nilgiris area and they are not agreeing for Valparai area, it cannot be due to any ulterior motive. The objections are based only due to peculiar conditions of one area and therefore, it was neither proper for comparing one area with the other nor to contend that the petitioner's Unions were unnecessarily and deliberately refusing to arrive at a settlement.

10.It is further contended that the existing service conditions as covered by the settlement can be altered only by following procedure under Section 19(2) of the Act. It was the employer who had given notice under Section 9-A of the Act and had also approached the authorities under the Act and had commenced the Conciliation proceedings. That being so, it was not open for the respondents to violate the provisions of Section 33(1) of the Act and seek to alter the conditions of service to the disadvantage of the employees during the pendency of the Conciliation proceedings. Such conduct not only amounted to non-compliance of the statutory provisions, but also attracted penal provisions. Therefore, respondents cannot be permitted to raise technical objections such as alternative remedy or the maintainability of a writ of mandamus.

11.Mr.A.L.Somayaji, learned Senior Counsel for some of the employers contends that the writ petition itself is not maintainable as against a Private Company. It is further stated that there was no Conciliation Proceeding pending as on date, in view of the fact that the Commissioner had directed bipartite talks among the parties and talks were taking place. Hence, Conciliation proceedings have come to an end. The Conciliation Proceeding was no more subsisting. The roll of the Conciliation Officer was only to bring about a settlement and he does not decide rights of parties. He would further submit that even assuming that Conciliation was pending, the Unions had the alternative remedy of invoking Section 33-A of the Act to implement the existing service conditions or to invoke Section 33(c) of the Act. The alleged violation of Section 33(1) cannot justify invoking extraordinary jurisdiction of this Court. Facts and figures were also furnished by learned Senior Counsel to support the contention that the Plantation industry was facing a crisis and it was no more possible to comply with the old wages. I would be subsequently dealing with the rulings cited by learned Senior Counsel in the context of the above submissions.

12.Mr.Vijay Narayan learned counsel appearing for the PAT contended that it was within the rights of the management to give effect to the changes contemplated under the notice under Section 9-A of the Act after notice is given. The effect of the provision under Section 33(1) of the Act has to be considered in the light of the other provisions of the Act. The duties of the Conciliation Officer in the context of public utility services were dealt with under Section 12 of the Act. His duties in the context of other institutions cannot also vary and his duty was only to bring about a settlement if possible and he was not deciding the rights of parties. Learned counsel also very strenuously pleaded that the very survival of the plantations was becoming impossible and in fact, the labour wing were fully aware of the position and that is the reason why the Union in other areas had come to amicable settlement agreeing for bringing down the wage structure. This is not an industry which can be closed down or be subject to lay-off, as in the case of other types of industries. Therefore, the labour force should realise that the survival of both would depend upon each other and being alive to the realities of the financial constraints on the management. He would also submit that notice of Conciliation was not given to the employers individually and hence, cannot be construed as a Conciliation proceeding within the meaning of Section 33 of the Act. The notice given to the Association cannot be construed as notice to the individual employer. On the facts of the case, the Conciliation Proceedings cannot be said to have commenced. He would further submit that even in a case where no notice under Section 9-A of the Act was given, it is not in every case, the Court would be inclined to interfere. There is no public duty cast upon the employer. The issues are purely contractual. It is further stated that the negotiations were proceeding in the right direction and if there should be interruption by the Court now at this stage, it might result in scuttling an amicable settlement.

13.Mr.R.T.Doraisamy, appearing for the 12th respondent contended that the employees had acted bona fide by initiating proceedings for Conciliation and genuine attempts were being made to find out proper solution. It is only a minority section of the employees who were opposing the settlement.

14.In reply, Mr.K.Chandru, learned Senior Counsel, contended that both the management and the labour were not at the same bargaining level. The very survival of the workers was at stakes. If certain concessions have been announced in the present Central Budget, it was due to joint-lobbying with the Government which shows that the labour was very much interested in the survival of the Plantation. The management was aiming only at keeping up its proportion of profits by reducing the salary unmindful of the consequential adverse effects which cannot be borne by the labour. This was a labour intensive industry which cannot contemplate reduction of the work force and that is the reason why the employers have thought it fit to cut down the wages unmindful of its grave effects on the workers. As regards the issue as to whether Conciliation Proceedings could be stated to be pending or not, learned Senior Counsel referred to the pleadings of the respondents

themselves to support his contention that the proceeding was very much pending.

15.I have considered the submissions of both sides and given my utmost consideration. The points for determination can be broadly formulated as follows:-
(a) Maintainability of the writ petition;
(b) Alternative remedy and monstrosity of the issue;
(c) Whether as on date the Conciliation Proceeding is pending?
(d) Whether the notice given to the Association is sufficient to bind the individual employer/Estate.

16.MAINTAINABILITY:
The contention that a writ of mandamus cannot be issued as against a Private Company especially where no public duty is involved in the discharge of duties, is mainly based on the judgment of the Supreme Court in V.S.T.INDUSTRIES LTD. v. V.S.T. INDUSTRIS WORKERS' UNION (200 1 (1) S.C.C., 298). Much reliance is placed on the observations contained in paragraph No.8 of the judgement which is as follows:
"The High Court has relied very strongly on the decision of a learned single Judge in T.GATTAIAH CASE where in it was stated that a writ may lie under Article 226 of the Constitution against a company incorporated under the Companies Act, 1956 as it is permissible to issue a writ against any person. Prima facie, therefore, a private person or an incorporated company cannot be taken out of the sweep and contemplation of Article 226 of the Constitution. That decision does not take note of the fact as to the nature of the functions that a person or an incorporated company should be performing to attract judicial review under Article 26 of the Constitution. In ANANDI MUKTA CASE this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the present case, the appellant is engaged in the manufacture and sale of cigarettes. Manufacture and sale of cigarettes will not involve any public function. Incidental to that activity there is an obligation under Section 46 of the Act to set up a canteen when the establishment has more than 250 workmen. That means, it is a condition of service in relation to a workman providing better facilities to workmen to discharge their duties properly and maintain their own health or welfare. In other words, it is only a labour welfare device for the benefit of its workforce unlike a provision where the Pollution Control Act makes it obligatory even on a private company not to discharge certain effluents. In such cases public duty is owed to the public in general and not specifically to any person or group of persons. Further the damage that would be caused in not observing them is immense. If merely, what can be considered a part of the conditions of service of a workman is violated then we do not think

there is any justification to hold that such activity will amount to public duty. Thus, we are of the view that the High Court fell into error that the appellant is amenable to writ jurisdiction."

17.Mr.A.L.Somayaji, also relies on few other judgments in support of the same contentions.

18.The statement of law thus expressed by the Supreme Court in V. S.T.INDUSTRIES case, supra, had already been pronounced by the Supreme Court in PRAGA TOOLS CORPORATION v. IMANUAL (1969 (2) L.L.J., 749).

19.In that case also, the Supreme Court observed that mandamus would lie to secure the performance of a statutory duty and as such the condition precedent for the issue of a mandamus is that there should be legal right in the petitioner and also could be issued to a person or to a Corporation to do a particular thing which is in the nature of public duty. Therefore, we have to see whether the principles

stated in PRAGA TOOLS case, and VST INDUSTRIES case, supra, would nonsuit the petitioners in seeking for direction to the respondents to comply with their statutory duties and obligations.

20.The power of the writ Court to issue the prerogative writs is well known. There is no controversy over the position that it is an extra-ordinary and plenary power to be exercised by the Supreme Court and the High Courts and could be issued to any person inclusive of a private individual. Whatever restrictions or embargo which are placed against the exercise of such power are only a series of self imposed restrictions which the Courts have imposed upon themselves considering that it is a discretionary remedy. Normally writs will not be issued in situations such as availability of alternative remedy, parties approaching the Court very belatedly, notices which are in the nature of show-cause notices, Executive functions which are administrative and discretionary in nature and based on the subjective satisfaction of the authorities etc. Likewise, for issuing writs positively, notwithstanding any of the above mentioned self imposed restrictions, writs can be issued for securing ends of justice, the Executive Authority acting without application of mind or without jurisdiction and deliberately violating statutory obligations and last but not the least when the action of respondents may be described as "monstrous". What is to be characterised as monstrous is no doubt to be left to the judicial conscience in the exercise of its discretion in the facts and circumstances of each case.

21.The question whether a writ can be issued to a private person and a Private Company is positively answered in the above two judgments themselves relied on by the employers namely, in PRAGA TOOLS's case and VST.INDUSTRIES case, supra. It is made clear that writ can be issued to a private individual or a Corporate body or Company and such category of persons need not be discharging any public or statutory

duty. Distinction is made only on the basis as to whether the impugned action of the respondents is in relation to any public duty or statutory duty. In VST.INDUSTRIES case, supra, in spite of the Supreme Court having found that the Company was not involved in any public duty, at the same time made it clear that if the same Company was violating the provisions of the Pollution control Act, a writ can be issued. Therefore, there is no question of any blind or universal embargo against issuing a writ against a private individual or a Company. If they violate statutory or public duties or indulge in monstrous activities, writ can be issued.

22.While attempting to interpret the judgments of the Supreme Court in PRAGA TOOLS case, supra, and VST.INDUSTRIES case, supra, it is needless to emphasise that the first principle of rule of precedents is that a decision is an authority for only what it decides and what it specifically deals with. The ratio of a decision cannot be operative to all situations by ignoring the background in which the judgment had been rendered. It is also settled proposition of law that a judgment cannot be interpreted as an Act of Legislature, but would govern only the specific, legal and factual issues dealt with by the judgments.

23.In PRAGA TOOLS case, supra, two rival Trade Unions had executed two different agreements with the management under Section 18 of the Act. One group of workmen approached the High Court under Article 2 26 of the Constitution of India questioning the agreement executed by the rival group. A mandamus was sought for to restrain the Company from implementing the agreement. Needless to say that the issue was purely contractual and there was no statutory violation much less transgression of any public duty. Likewise in VST.INDUSTRIES case, supra, the issue was as regards the provisions of the Factories Act and not about the obligations arising under the Industrial Disputes Act. The prayer was for a mandamus to treat the employees of the canteen of one of the factories belonging to the Company, as employees of the Company itself. This plea was rejected by the Supreme Court in the context of Section 46 of the Factories Act, 1948 and it was rightly held that no public duty was involved in the running of the canteen. This judgment is only a restatement of the law on the subject.

24.In GENERAL UNION v. K.M.DESAI (1990 (1) L.L.N., 181, a learned single Judge of Bombay High Court held that the employees of a canteen under a contractor do not become direct employees of the Company.

25.In WORKMEN OF ASHOK LEYLAND LTD. v. ASHOK LEYLAND & OTHERS (199 1 (2) L.L.J., 12, a Division Bench of this Court held that such employees of the canteen do not become the employees of the Company or the occupier of the factory.

26.In WORKMEN, S.R.F.LTD. v. GOVT. OF TAMIL NADU (1995 (1) L.L.N., 485, again a Division Bench of this Court held that there was no obligation on the part of the industrial establishment

to run a canteen by itself by employing its own workmen.

27.In WORKMEN v. ASHOK LEYLAND LTD. (1986 (II) L.L.N., 1035, it was held that where a canteen ceased to function as a result of heavy loss, the factory was not bound to re-employ the erstwhile employees of the canteen.

28.The above judgments have been rendered in the context of the scope of the provisions of the Factories Act,1948, which is only a Legislative measure aimed at securing better living conditions to the worker. A perusal of the statement of objects and reasons shows that the Act "provides for health, safety, welfare, other aspects of workers in factories." The obligations of the employer under that Act cannot be over stated or compared with the provisions of the Industrial Disputes Act.

29.In contrast with the provisions of the Factories Act, the scope of the Industrial Disputes Act is well-known. The Industrial Disputes Act deals with the basic obligations, fundamental rights, duties, obligations and liabilities of both labour and management. The scope of disputes involve not only that of a single individual worker and the management alone. With the recognition of Trade Unions and their rights to raise disputes in the context of not only individual grievances, but also collective demands and grievances of large number of workers, the issues have impact on the industrial peace, law and order, productivity and consequent wastage and thus affect public interest to a very great extent.

30.The public interest involved in the issues covered under the Industrial Disputes Act has been very effectively stated by the Constitution Bench of the Supreme Court 50 years ago in D.N.BANERJI v. P.R. MUKHERJEE (A.I.R.1953 S.C., 58) as follows:
"It is therefore incumbent on us to ascertain what the statute means by "industry" and "industrial dispute", leaving aside the original meaning attributed to the words in a simpler state of society, when we had only one employer perhaps, doing a particular trade or carrying on a particular business with the help of his own tools material and skill and employing a few workmen in the process of production or manufacture, and when such disputes that occurred did not go behind individual levels into acute fights between rival organisations of workmen and employers, and when large scale strikes and lock-outs throwing society into chaos and confusion were practically unknown Legislation had to keep pace with the march of times and to provide for new situations. Social evolution is a process of constant growth, and the State cannot afford to stand still without taking adequate measures by means of legislation to solve large and momentous problems that arise in the industrial field from day to day almost."

31.If the introduction of the Industrial Disputes Act was a product of social evolution and was meant to meet the changes in the

society, throwing society into chaos and confusion, I fail to appreciate how to term the Industrial Disputes Act as a mere legislation dealing with only personal or individual rights and to hold that no public duty was involved in the proceedings under the Act. It is true that in a case of a dispute between a single workman and the management, no public interest would be involved. But in a case of the present type, which involves the question of wages due to thousands of workers and the potential dangers to which the society would be exposed if their grievances are not sorted out, definitely the issue affects public interest and a corresponding public duty is cast upon both the management and the labour to ensure public peace. It is also a fact that on the very same issue, peace, law and order in the areas where the Tea estates are located have been greatly affected and public peace, tranquility had been very much disturbed. The public interest and public duty involved is as much as that of violation of the Pollution Control Act, which has been pointed out by the Supreme Court as an instance which would justify invocation of Article 226 of the Constitution of India, notwithstanding the fact that the respondent may be only a private individual and not being involved in the discharge of any public duty, vide VST.INDUSTRIES case.

32.In the very same judgment of the Constitution Bench cited above, the Supreme Court went further to point out that industrial disputes could affect large groups of workmen and employees arrayed on opposite sides on certain common issues such as wages, bonus etc., and observed as follows:-
"Such widespread extension of labour unrest is not a rare phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular business becomes a large scale industrial dispute, which the Government cannot afford to ignore as a minor trouble to be settled between particular employer and workman."

33.In BALLARPUR COLLIERIES CO. v. PRESIDING OFFICER, DHANBAD (1972 (2) S.C.C.,27), the Supreme Court dealt with the scope of the Industrial Disputes Act and held as follows:-
"In this connection it has to be borne in mind that proceedings of industrial adjudication are not considered as proceedings purely between two private parties having no impact on the industry as such. Such proceedings involve larger public interest in which the industry as such (including the employer and the labour) is vitally interested. The scheme of the law of industrial adjudication designed to promote industrial peace and harmony so as to incre ase production and help the growth and progress of national economy has to be considered in the background of our constitutional set-up according to which the State has to strive to secure and effectively protect a social order in which social, economic and political justice must inform all institutions of national life and the material resources of the community are so distributed as best to sub-serve the common good."

34.This is precisely the situation now faced in the present case and therefore, I find it difficult to accept the contentions

that Article 226 of the Constitution of India cannot be invoked and no mandamus can be issued.

35. For the very same reasons, as above, I am unable to accept the comparison which Mr.A.L.Somayaji was drawing as regards the Rent Control Act, namely, if every statutory violation could justify invocation of Article 226 of the Constitution of India, then a landlord or a tenant could do so complaining that the opposite party had violated the provisions of the Rent Control Act. Firstly, the wider and pervasive nature of the disputes under the Industrial Disputes Act had been very succinctly described by the Constitution Bench as above. The Rent Control Act which deals with the individual and mutual contractual obligations between one landlord and one tenant (or at the most a five or six tenants) cannot at all be compared with the range of disputes contemplated under the Industrial Disputes Act. Secondly, I had already mentioned that in a given case a dispute raised by a single worker or as against the single worker, public interest or public duty will not be involved. But in the present case, we are confronted with a dispute between thousands of workers and about 30 Tea Estates.

36. A Division Bench of this Court when confronted with similar objections in MADRAS LABOUR UNION v. BINNY LIMITED (1995 (1) C.T.C.,73) had dealt with the issue in detail with reference to several rulings of the Supreme Court and had ultimately concluded that a mandamus can be issued as against a private body in the context of gross violation of statute or public duty and if the monstrosity of the facts would justify intervention by the Court.

37.Therefore, I am inclined to hold that the above writ petitions are maintainable and the judgment in VST.INDUSTRIES case supra, does not in any manner affect the facts of the case. On the other hand, the said judgment is positive that a writ can be issued even as against a private individual the impugned issue relates to a public duty or public interest.

38.ALTERNATE REMEDY AND MONSTROSITY OF THE ISSUE The issue of alternate remedy is inter related with the monstrosity of the issue and would also be relevant for the issue of maintainability which has been considered above. Both Mr.A.L.Somayaji and Mr.Vijay Narayan had emphasised at length that the forums constituted under the act were effective remedies and as such writ petitions cannot be entertained. It is further stated that Section 33-A of the Act entitles the aggrieved party to complain against violation of Section 33(1)(a) of the Act and as such the petitioners were not entitled to invoke the writ jurisdiction. It is true that Section 33-A of the Act deals with the situation of an employer contravening the provisions of Section 33 of the Act during the pendency of the proceedings before the authorities under the Act. An employee aggrieved by the contravention may make a complaint in writing to the concerned authority and such authority shall adjudicate upon it as if it were a dispute pending before it. To appreciate this objection, it is necessary to extract Section 33(1) of the Act.

"33.Conditions of service, etc. To remain unchanged under certain circumstances during pendency of proceedings
(1)During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before (an arbitrator or) a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-
(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,
save with the express permission in writing of the authority before which the proceeding is pending;"

39.Section 33(1) makes it mandatory that during pendency of the proceedings under the Act, the existing conditions of service shall not be altered to the disadvantage of the employee save with the express permission in writing of the authority before which the proceeding is pending. If there is violation of the said mandatory requirement then the employee has the right to complain under Section 33-A of the Act which will be treated as a dispute and dealt with accordingly.

40.To appreciate the objections of the respondents as regards this contention, it is necessary to recall the background in which the issue went before the Conciliation Officer after issuing notice to the Unions under Section 9-A of the Act. The first respondent by their letter to the Joint Commissioner of Labour Chennai, dated 29.11.2001 informed the issue of notice under Section 9-A of the Act. The Joint Commissioner, Coimbatore, on receipt of the said notice by his letter dated 7.12.2001 informed the first respondent as well as the Labour Unions that negotiations will take place before the Commissioner of Labour on 18.12.2001 and that the said notice was sent in terms of Section 12(1) of the Act and Rules 23 and 37 of the Industrial Disputes Rules.

41.It is very important to bear in mind that it was the employer who chose to raise the dispute and it is expected of the management to adhere to the statutory obligations under Section 33 of the Act in terms of which the employer shall not be entitled to vary the existing terms of employment to the disadvantage of the workers. The rights of the workers thus incorporated under Section 33 of the Act is a very valuable right and imposes a duty on the employer not to alter the conditions of service.

42.The right of the worker under Section 33 of the Act should also be viewed along side their right to go on a lawful strike by complying with the provisions of the Act and the conditions envisaged thereunder. It is a right which is statutorily recognised and does not

require citing a plethora of precedents in support of the said accepted rights of the workers and the right of the employer to resort to a lawful lock-out. But Sections 22 and 23 of the Act place an embargo on such a right under the circumstances specified thereunder. While Section 22 of the Act deals with strike and lock out in public utility services, Section 23 deals with general prohibition of strikes and lock-out.

43.Section 23 of the Act prohibits workmen going on strike during the pendency of Conciliation proceedings or a dispute before the Labour Court, Industrial Tribunal or the Arbitration proceedings and during any period when a settlement or award is in operation. In the present case, the period of settlement is over and the management not being satisfied by expressing their intention to reduce the wages by issuing statutory notice, had also initiated Conciliation proceedings before the Commissioner, thereby depriving the valuable right of the workers to resort to a legal strike which is the only method of their exercising the bargaining power. At the same time, the management will not also condescend to move the appropriate authority for permission and would violate the mandate that they should not alter the conditions of service to the detriment of the employees resulting in the following series of consequences, thus pushing the workers into an inequitable and unfairly disadvantageous position as follows:-
(a)Giving notice for reducing the existing wage structure which itself is a justifiable grievance for the workers which ought not to have been resorted to except by way of settlement or by an award.
(b)Not seeking permission before the Conciliation Officer to vary the terms of service thereby intentionally violating mandate under Section 31(1) of the Act.
(c)Having failed to comply with the requirement of seeking permission under Section 33(1) of the Act raising an untenable contention that the workers, if they wish they may raise a dispute under Section 33-A of the Act.
(d)If the workers in a helpless situation invoke jurisdiction of this Court under Article 226 of the Constitution of India, the management raising a contention that the writ is not maintainable.
(e)Having themselves initiated a dispute, raising further untenable technical contentions regarding the pendency of the dispute and the individual estates not being a party etc., which have neither legal nor moral basis as explained below.

44.The above mentioned series of conduct on the part of the management would be sufficient to indicate not only the unreasonable attitude of the employers, but also the "monstrosity" of the existing situation. Reducing the existing wage structure is itself an unusual and rare feature to be proposed by the management considering the spiralling cost of living. I do not propose to say that such a variation is impermissible, but is a rare proposal which could be justified only by adducing proper and convincing materials before the authorities. Therefore, to reduce the wages to which the workers are accustomed to, without even seeking the statutory permission from the authorities before whom the dispute is pending as required under the Act, would be in my

opinion sufficient to estop the management from raising the contention of alternate remedy.

45.The necessity of seeking permission of the authority during the pendency of the dispute is a mandatory requirement and a precondition before the management could seek to alter the conditions of service. It is intended to maintain status quo. In PUNJ.N.BANK v. A.I.P.N. B.E.FEDERATION (A.I.R.1980 S.C., 160), the Supreme Court highlighted the mandatory nature of the ban as follows:-
"The object of the Legislature in enacting this section is obvious. By imposing the ban S.33 attempts to provide for the continuance and termination of the pending proceedings in a peaceful atmosphere undisturbed by any causes of friction between the employer and his employees. In substance it insists upon the maintenance of the status quo pending the disposal of the industrial dispute between the parties; nevertheless it recognises that occasions may arise when the employer may be justified in discharging or punishing by dismissal his employees, and so it allows the employer to take such action subject to the condition that before doing so he must obtain the express permission in writing of the Tribunal. It is true that the ban is imposed in terms which are mandatory and S.31(1) makes the contravention of the provisions of S.33 an offence punishable as prescribed therein."

46.It is true that Section 33-A entitles the workmen to raise a complaint. Reliance is placed on the following judgments by the employers in support of their contention that the workers should resort to that remedy, which are in my opinion not applicable to the facts of the present case.

47.In SREE SEETHA VENKATESH MILLS EMP. UNION v. GOVT. OF T.N. (200 1(II) L.L.J.,185) (which was also confirmed by a Division Bench in Writ Appeal No.151 of 2001). F.M.Ibrahim Kalifulla,J. was confronted with the situation where the Conciliation proceedings had ended in a failure report and no reference had been made to the Labour Court. It is at that stage, the Union filed the writ petition praying for the issue of a writ of mandamus to direct the Government to refer the dispute for adjudication and in the mean time to direct the employer to maintain status quo. In other words, it was a case where no proceeding was pending before any of the authorities under the Act when the writ petition was resorted to.

48.The judgment of another Division Bench in GORDON WOODROFFE EMP. UNION v. STATE OF T.N. (1988 (I) L.L.N., 196) also arose under the same circumstances, namely, the Conciliation had ended in failure and the Union came forward with a writ to prohibit the management from altering the conditions of service. Therefore, the said judgment also will not apply.

49.Both the decisions as aforementioned are perfectly understandable having regard to Section 20 of the Act which deals with commencement and conclusion of the proceedings. Under Section 20(2) of

the Act, a conciliation proceeding shall be deemed to have concluded where no settlement is arrived at and when the report of the Conciliation Officer is received by the appropriate Government. Therefore, when the writ petitions were filed in those cases, no proceeding was pending before any authority.

50.The judgment of the Division Bench in SUN PHARMACEUTICAL INDS. LTD. v. S.P.I.L.STAFF UNION (2000 (4) L.L.N., 932) also deals with a case under different circumstances. The Union filed the writ petition for the issue of a writ of mandamus to direct the Conciliation Officer to complete the proceedings and also sought for interim injunction restraining the employer from shifting the machinery or transferring the employees. The Division Bench held on facts that the attempt on the part of the Union was premature and also amounted to a plea to maintain status quo ante. The Division Bench did not go into the issue of the obligations of the management to move the authority to grant permission to alter the conditions of service. On facts also it was held that there was no monstrous situation requiring the intervention of the Court.

51.The nature and scope of the enquiry under Section 33-A of the Act, would in my opinion render the provision as an ineffective remedy and cannot be pleaded an effective alternative remedy so as to prevent the Union to seek for the issue of a writ of mandamus to compel the employer to comply with the mandatory requirement under Section 33-(1) of the Act. Resort to Section 33-A of the Act is nothing more than a fresh reference and another dispute and is not an effective remedy to maintain the status quo. In the following judgments, the Supreme Court had clearly held that the proceedings under Section 33-A of the Act is not different from a dispute arising out of a reference under Section 10 of the Act. For instance, in the case of dismissal of an employee in contravention of Section 33 of the Act, on a complaint under Section 33-A of the Act, the Tribunal has to separately deal with not only the question of contravention, but also the merits of the order of the dismissal.
(i)PUNJ.N.BANK v. A.I.P.N.B.E.FEDERATION (A.I.R 1960 S.C., 160);
(ii)DELHI CLOTH & GENERAL MILLS v. RAMESHWAR (A.I.R.1961 S.C., 689)
(iii)BHAVNAGAR MUNICIPALITY v. A.KARIMBAI (1977 (34) F.L.R., 279).
Therefore, resort to Section 33-A of the Act is not at all an effective or an alternate remedy. It is in fact more complicated and long winding than the main dispute itself which is awaiting adjudication. The management which intentionally and with impunity violates Section 33(1) of the Act cannot be heard to plead that Section 33-A of the Act is an effective alternative remedy. The object of invocation of Article 226 of the Constitution of India in a monstrous situation is intended to secure timely justice and a p lea of alternative remedy cannot be entertained at the instance of a defaulting party.

52.The more appropriate ruling in this context would be the latest judgment of a Constitutional Bench of the Supreme Court in

JAIPUR ZILA SAHAKARI BHOOMI VIKAS BANK LTD. v RAM GOPAL SHARMA (2002 (2) S.C.C., 244). In that case, the Supreme Court dealt with a provision similar to Section 33(1) of the Act namely, Section 33 (2)(b) of the Act which requires the management to seek for approval of the discharge or dismissal of an employee during the pendency of the proceedings. The management took the stand that the Union can only raise another dispute or forward a complaint under Section 31(1) or 33-a of the Act. The Constitution Bench came down heavily on such a plea and held that such a person who contravenes the provision "cannot be rewarded by relieving him of the statutory obligations created on him to make such an application." The Supreme Court went further to observe as follows:-
"Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under Section 33-A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under Section 33-A. There is nothing in Sections 31,33 and 33-A to suggest otherwise even reading them together in the context. These sections are intended to serve different purposes."
53.My conclusions as above are therefore, fortified by the observations of the Constitution Bench and the plea of Section 33-A as being an alternate remedy cannot be sustained, more so in a case where it is the management which went before the Conciliation Officer. I am inclined to hold that the facts stated above and the situation having been brought about by the management itself, are more than sufficient to hold that the situation is a monstrous one enough to invoke the jurisdiction of this Court.

54.As regards alternate remedy, it is also a settled proposition of law that it is only a rule of policy convenience and discretion and not one of bar of jurisdiction under Article 226 of the Constitution of India, vide the judgment of the Constitution Bench in U.P.STATE v. MOHMMAD NOOH (A.I.R. 1958 S.C., 86)

55.Whether as on date the Conciliation proceeding is pending:
The contention on behalf of the respondents is that as a result of the Commissioner of Labour having suggested the issue to be discussed between the Union and the Planter's Association by bilateral talks, the process of conciliation is over and does not subsist any more. The role of the Conciliation Officer is only to mediate and he cannot decide the rights of the parties. Therefore, in directing the parties to negotiate between themselves, the Conciliation Proceeding is deemed to have come to an end.

56.I am unable to accept the aforesaid contention. The Commissioner, after sending the letter dated 7.12.2001, calling upon all the parties to attend the Conciliation on 18.12.2001, admittedly

proceeded with the Conciliation talks. The suggestion for bipartite talks is nothing more than an attempt to facilitate both parties to narrow down the area of difference and such a step or suggestion cannot be deemed as abandoning or closing the Conciliation or Conciliation Officer loosing his jurisdiction. It is nothing more than a Court or a Tribunal, adjourning the hearing to enable the parties to come to a settlement. In fact, that is how the employers themselves had understood the issue. By letter 29.12.2001 the Planters Association had reported about the progress of bipartite talks and that further discussions were to continue on 4.10.2001. This was followed by similar letter dated 7.1.2002. The Commissioner by his letter dated 11.1.2002, had asked the Association to intimate the present stage of the bilateral talks by return fax in order to proceed further in the matter. There was absolutely no need for either the Commissioner or the Association to have gone through such correspondence, if the Conciliation had been terminated. This was followed by a series of similar letters dated 12.1.2002, 15.1.200 2, 19.1.2002, 25.1.2002, 31.1.2002, 5.2.2002, 14.2.2002 and 22.2.2002 to the Commissioner stating that the talks were in progress and further developments will be reported to the Commissioner. If the Conciliation was closed, there was no need for such an exercise. In the mean time, the Association also addressed a letter to the Collector, Coimbatore, requesting the District Administration to give protection to maintain law and order. The District Collector by his letter dated 6.2.2002, had in fact referred to the pendency of the Conciliation proceedings before the Commissioner of Labour and as such no unilateral change can be effected by the planters and that therefore, the members of the Association may not precipitate this issue. I am referring to this letter only to the limited extent as reflecting the factual position of the pendency of the Conciliation proceedings. The PAT did not raise a contention that conciliation was not pending. Therefore, the mere circumstance of the parties having been allowed to hold talks between themselves cannot result in terminating the Conciliation proceedings. In fact as referred to earlier, under Section 20 of the Act, a Conciliation proceeding can be stated to have concluded only where settlement is arrived at and signed by the parties or when no

settlement is arrived at, and the failure report is received by the appropriate Government. There is no other process by which a Conciliation proceeding can be stated to have concluded.

57.Apart from the aforesaid circumstances, a perusal of the counter affidavits filed by the respondents themselves disclose how they themselves have understood about the position. In the counter affidavit, it is admitted that the respondents had given a letter to initiate Conciliation proceedings. In fact the very pleading that the Union should have invoked a complaint under Section 33-A of the Act leads to the presumption about the pendency of the Conciliation proceedings. If no proceeding is pending, then there is no possibility of invoking Section 33-A of the Act at all.

58.Therefore, it is not possible to accept the contention that the Conciliation proceeding is not pending.

59. WHETHER NOTICE GIVEN TO THE P.A.T. IS SUFFICIENT TO BIND THE INDIVIDUAL EMPLOYER/ESTATE?

This point is urged by the respondents/employers again in an attempt to wriggle out of the situation which they themselves created by having initiated Conciliation proceedings. I do not find any basis for this objection. It is pertinent to note that all the employers are members of the PAT. This position is not in dispute. All the talks have been proceeding only with PAT and not with the individual planters. It is most important to note that agreements or settlements have also been entered into only by PAT as representing the planters. In fact, it is the PAT which had given notice under Section 19(2) of the Act to terminate the continued operation of the existing settlement after its expiry on 31.12.2001. It is only on the advise of PAT the format of the notice under Section 9-A of the Act as prescribed by the PAT vide their letter dated 29.11.2001 was sent to the individual employers as well as to the Joint Commissioner, Labour, and thus the conciliation was initiated. The process of negotiation commenced with PAT writing a letter to the Hon'ble Minister for Labour which was followed by subsequent talks with him. A perusal of the notice given by the employers for change of service condition also discloses that reference is made only to the agreement arrived at by the PAT on their behalf and PAT having given notice of termination on 24.10.2001 on behalf of their members/estates. Therefore, the role played by PAT was well understood by the PAT as well as the individual estates.

60.The most crucial feature is the notice of Conciliation which was sent by the Joint Commissioner on 7.12.2001 only to the PAT under Section 12(1) of the Act read with Rules 23 and 37 of the Tamil Nadu Rules. Rule 23 of the Rules enables the Conciliation Officer to intimate to the parties declaring his intention to commence the Conciliation proceedings. Rule 37 deals with service of summons or notice where there are numerous persons as parties to the proceedings and when such persons are members of the any Trade Union or Association, the service of notice on the Secretary or the Principal Office of the Union or Association shall be deemed to be service on such persons. Such a service shall also be considered as sufficient in the case of parties represented by such Unions or Associations.

61.It is pertinent to note that neither PAT nor individual employer at any time raised any demur when the Commissioner sent his notice only to PAT specifically quoting Rules 23 and 37 nor during discussions with him. The negotiations have been taking place on numerous occasions to the knowledge of the individual employers only with the PAT representing all the employers. Therefore, the present defence which is now taken only in these writ petitions by PAT and the individual estates, is not at all fair.

62.Mr.Vijay Narayan was at pains to emphasise that in the absence of individual authorisation by the members, the PAT cannot be a properly constituted representative. Reliance is placed on Rule 46. Rule 46 is in relation to a worker or workers authorising another to represent him or them. The said Rule can have no relevance to a notice which had been issued under Rule 37. An argument was also advanced that Rule 37 may not strictly apply to the employers, but would apply only to the Trade Unions. I am afraid that there is no basis for such a distinction.

63.As stated earlier, it is the PAT which has always been negotiating with the Unions, executing agreements, holding talks with the Minister after the present dispute arose and the Commissioner of Labour and corresponding with the Commissioner on behalf of the estates and corresponding with the District Collector at all stages. Therefore, the defence now raised is obviously resorted to as a desperate remedy without basis.

64.The very claim by the employers that the earlier settlements are no more effective and not binding on them is based on the notice issued by PAT under Section 19(2) on 24.10.2001. Agreements are executed with PAT only and notice of termination is issued by PAT. PAT initiates conciliation proceeding and conciliation is proceeded with only PAT representing all the estates. No objection is raised at any stage by PAT or the individual employer that PAT is not representing them, or by the PAT that they are not representing the individual Estates.

65.In conclusion, I find that the writ petitions are maintainable and the petitioners are entitled to the relief. It is true that the difficulties expressed by both Mr.A.L.Somayaji and Mr.Vijay Narayan, on behalf of the Estates regarding the problems experienced by the Plantation Industry may be correct to a considerable extent. But when the statute requires that the existing service conditions cannot be altered to the disadvantage of the workers without a written permission from the authorities before whom the proceeding is pending, the employer cannot be heard to violate the same and to drive the workers to an inequitable position. It is only to enable the employer to alter the conditions of service even during the pendency of the dispute, the employer is given the liberty and statutory right to move the authority for the said purpose. When such a petition is filed, the authority is bound to pass a considered order by taking into account all the materials and circumstances objectively. The authority would be performing a quasi judicial function and therefore, bound to pass a reasoned order and if the PAT has enough materials to substantiate their claims, there need not be any hesitation on their part. The fact that the Unions in other areas had come to amicable settlement will also be an added ground for the employer to justify their proposed action which cannot be ignored by the authority without proper material. When the statute prescribes a certain mode or procedure, the party who is obliged to comply with the same cannot be heard to violate the same and plead otherwise.

66.Therefore, the above writ petitions are allowed with liberty to the respondents to move the Conciliation Officer for permission under Section 33(1) of the Act before altering the conditions of service and till then, the respondents are bound to comply with the existing terms of the service conditions. No costs. Connected W.P.M.Ps are closed as unnecessary.

Index: Yes.
21.03.2002
Internet: Yes.
sai/-

K.P.SIVASUBRAMANIAM,J.

Order in
W.P.No.4884 to 4887 of 2002
and 5651 of 2002
Delivered on: 21.03.2002